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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/681,916	10/10/2003	Geoffrey Maseruka	090426-00002	7684
64199	7590	02/16/2011		
WARD AND SMITH, P.A. 1001 COLLEGE COURT P.O. BOX 867 NEW BERN, NC 28563-0867			EXAMINER LEVINE, ADAM L	
			ART UNIT 3625	PAPER NUMBER
			NOTIFICATION DATE 02/16/2011	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/681,916

Applicant(s)

MASERUKA, GEOFFREY

Examiner

ADAM LEVINE

Art Unit

3625

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 04 February 2011 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(g).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____
Claim(s) objected to: _____
Claim(s) rejected: 1, 3-16, 18, 20 and 22-24.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Adam Levine/
Primary Examiner, Art Unit 3625

Continuation of 11, does NOT place the application in condition for allowance because:

Pertaining to the rejection under 35 USC 112 second paragraph:

The basis for this rejection in an unclear use of potential "means plus function" language (35 USC 112 sixth paragraph) would be overcome by this amendment, however the amendment also clarifies that the subsystems and sections are software elements. They are described as "web-based" but are not clearly claimed as being connected with the main computer device, and are also not clearly claimed as other alternatives such as steps performed by the main computer device or as a product embodied on a non-transient computer readable storage medium. Are the web based elements independent of the computer device? Are they separate parts of the system or are the web-based elements within or connected to the computer? As a result the scope of the invention being claimed is indeterminate. This would result in another rejection under 35 USC 112 second paragraph based on new rationale unless the claims are amended to clarify the connection between the software elements and the computer device.

Pertaining to rejection under 35 USC 103:

Applicant declares "Levasseur does not provide any disclosure for any use of the microprocessor in the vending machine for the reallocation of empty shelf space; that function is performed by the serviceman. Levasseur is completely silent with regard to the ability of the system, in this case a vending machine, to ensure the availability of open shelf or bin space...". The computer does not do the reallocation or ensuring available shelf space in the present claimed invention either. It is done by the supplier and vendor merely using the computer and internet to communicate information back and forth. In fact, the Levasseur disclosure is stronger than the present disclosure with regard to the connection between the processor and the step of ensuring available shelf space. The present disclosure requires the vendor to do the ensuring itself and merely register the information that it discovers for communication to others.

Applicant argues that the prior art does not "offer such open shelf or bin space for purchase or rent to another vendor," however this is not an accurate representation of the claimed invention. The vendor does not "offer such open shelf or bin space for purchase or rent to another vendor," in the presently claimed invention.

There is an additional question concerning nonfunctional descriptive matter. Is "available shelf space" functionally different from any other product or service for sale in context of this invention and the prior art? It does not appear to be, thereby rendering it nonfunctional descriptive matter. How is the listing of available shelf space and confirming that it is available any different from doing the same with any other product or service? This is disclosed in Walker (Paper No. 20080506; US Patent No. 7,340,419 B2; prior publication 200210133407 A1).

Pertaining to applicant's remaining argument, purchase or rent of shelf space is disclosed in Fields & Fulmer in many forms including "slotting fees," and "pay for space."

Finally, as indicated by examiner in the interview of February 2, 2011, the present amendment if entered would result in a rejection of claims 10-12 under 35 USC 101.